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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

SPENCER NEAL,

Plaintiff,

vs.

426 LLC,
d/b/a THE SCORE DRAFT ROOM

&

THE ANTONIO J. LORENZO, aka JAFAR
ABUKHALED LIVING TRUST,
ANTINIO J. LORENZO, TRUSTEE,

&

422 EAST EXCHANGE, LLC,

Defendants.

Case No.:

Civil Rights

**COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES:**

1ST CAUSE OF ACTION: For Denial of
Access by a Public Accommodation in
Violation of the Americans with Disability Act
of 1990 ("title III" and "ADA"), 42. U.S.C. §§
12181 *et seq.*

2ND CAUSE OF ACTION: For Denial of
Access by a Public Accommodation in
Violation of Ohio Revised Code § 4112.02, *et
seq.*

3RD CAUSE OF ACTION: For Denial of
Access by a Public Accommodation in
Violation of Ohio Administrative Code §
4101:1-11, *et sec.*

DEMAND FOR JURY

Plaintiff SPENCER NEAL Complains of Defendants 426 LLC, THE ANTONIO J.
LORENZO, AKA JAFAR ABUKHALED LIVING TRUST and 422 EAST EXCHANGE, LLC,
and alleges as follows:

1 **INTRODUCTION:**

2 1. This is a civil rights action for discrimination against persons with physical
3 disabilities, of which plaintiff SPENCER NEAL is a member of, for failure to remove
4 architectural barriers structural in nature at Defendants' THE SCORE DRAFT ROOM, a place
5 of public accommodation, thereby discriminatorily denying plaintiff access to, the full and equal
6 enjoyment of, opportunity to participate in, and benefit from, the goods, facilities, services, and
7 accommodations thereof. Plaintiff seeks injunctive relief and damages pursuant to the Americans
8 with Disability Act of 1990 ("title III" AND "ADA"), 42. U.S.C. §§ 12181 *et seq.*; Ohio Revised
9 Code § 4112.02, *et seq.*; and Ohio Administrative Code § 4101:1-11, *et sec.*

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12 2. Plaintiff SPENCER NEAL is a person with physical disabilities who, on or
13 about September 30, 2017, was an invitee, guest, patron, or customer at Defendants' THE
14 SCORE DRAFT ROOM, in the City of Akron, Ohio. At said time and place, defendant failed to
15 provide proper legal access to THE SCORE DRAFT ROOM, "which is a public
16 accommodation" and/or a "public facility". The denial of access was in violation of both federal
17 and Ohio legal requirements, and plaintiff SPENCER NEAL suffered violation of his civil rights
18 to full and equal access, and was embarrassed and humiliated.

19
20 **JURISDICTION AND VENUE:**

21 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
22 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*
23 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same
24 nucleus of operative facts and arising out of the same transactions, are also brought under
25 parallel Ohio law, whose goals are closely tied with the ADA, including but not limited to
26 violations of Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code § 4101:1-11,
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28

1 *et sec.*

2 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is
3 founded on the facts that the real property which is the subject of this action is located in this
4 district at/near 426 E. Exchange St., in the City of Akron, County of Summit, State of Ohio and
5 that plaintiff's causes of action arose in this district.
6

7 **PARTIES:**

8 5. Plaintiff SPENCER NEAL is a "physically handicapped person," a "physically
9 disabled person," and a "person with physical disabilities." (Hereinafter the terms "physically
10 disabled," "physically handicapped" and "person with physical disabilities" are used
11 interchangeably, as these words have similar or identical common usage and legal meaning.)
12 Plaintiff SPENCER NEAL is a "person with physical disabilities," as defined by all applicable
13 Ohio and United States laws. Plaintiff requires the use of a wheelchair to travel about in public.
14 Consequently, plaintiff SPENCER NEAL is a member of that portion of the public whose rights
15 are protected by the provisions of Ohio Revised Code § 4112.02, *et seq.* and Ohio Administrative
16 Code § 4101:1-11, *et sec.*
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18

19 6. Defendants 426 LLC, a for-profit Ohio limited liability company, THE ANTONIO J.
20 LORENZO, AKA JAFAR ABUKHALED LIVING TRUST, an entity created and administered
21 under Ohio law, and 422 EAST EXCHANGE, LLC, a for-profit Ohio limited liability company,
22 (hereinafter alternatively referred to as "Defendants") are the owners and operators, lessors
23 and/or lessees, or agents of the owners, lessors and/or lessees, and/or alter ego, franchisor and/or
24 franchisee, of the building and/or buildings which constitute a public facility in and of itself,
25 occupied by THE SCORE DRAFT ROOM, a public accommodation, located at/near 426 E.
26 Exchange St., Akron, Ohio, and subject to the requirements of Ohio state law requiring full and
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1 equal access to public facilities pursuant to Ohio Revised Code § 4112.02, *et seq.*, Ohio
 2 Administrative Code § 4101:1-11, *et sec.*, and subject to the Americans with Disability Act of
 3 1990 (“TITLE III” AND “ADA”), 42. U.S.C. §§ 12181 *et seq.*, and to all other legal
 4 requirements referred to in this complaint.
 5

6 7. At all times relevant to this complaint, Defendants are the lessee, or agent of the
 7 lessees, and/or lessors, of said premises, and/or alter ego of the lessees, lessors and their agents,
 8 and owns and operates in joint enterprise the subject THE SCORE DRAFT ROOM as a public
 9 facility at/near 426 E. Exchange St., Akron, Ohio. This business is open to the general public and
 10 conducts business therein. The business operating on said premises is a “public accommodation”
 11 subject to the requirements of Ohio Revised Code § 4112.02, *et seq.* and Ohio Administrative
 12 Code § 4101:1-11, *et sec.* Plaintiff does not know the relative responsibilities of the defendant in
 13 the operation of the facilities herein complained of, and alleges a joint venture and common
 14 enterprise by all such Defendants.
 15

16 8. At all times relevant to this complaint, Defendants are the landlords/lessors,
 17 tenants/lessees and the owners and operators of the subject THE SCORE DRAFT ROOM, a
 18 public accommodation located at/near 426 E. Exchange St., Akron, Ohio. As such, Defendants
 19 are jointly and severally responsible to identify and remove architectural barriers pursuant to
 20 Code of Federal Regulations section 36.201(b), which states in pertinent
 21 part:
 22

23
 24 **§ 36.201 General**

25 (b) Landlord and tenant responsibilities. Both the landlord
 26 who owns the building that houses a place of public
 27 accommodation and the tenant who owns or operates the place of
 28 public accommodation are public accommodations subject to the
 requirements of this part. As between the parties, allocation of
 responsibility for complying with the obligations of this part may

1 be determined by lease or other contract.

2 CFR §36.201(b)

3 9. Plaintiff does not know the true names of Defendants, their business capacities, their
4 ownership connection to the property and business, nor their relative responsibilities in causing
5 the access violations herein complained of, and allege a joint venture and common enterprise by
6 all such Defendants. Plaintiff is informed and believes that the Defendants herein is a public
7 accommodation, and is the agent, ostensible agent, master, servant, employer, employee,
8 representative, franchisor, franchisee, joint venturer, alter ego, partner, and associate, or such
9 similar capacity, of each of the other Defendants, and was at all times acting and performing, or
10 failing to act or perform, within the course and scope of his, her or its authority as agent,
11 ostensible agent, master, servant, employer, employee, representative, franchiser, franchisee,
12 joint venturer, alter ego, partner, and associate, or such similar capacity, and with the
13 authorization, consent, permission or ratification of each of the other Defendants, and is
14 responsible in some manner for the acts and omissions of the other Defendants in legally causing
15 the violations and damages complained of herein, and have approved or ratified each of the acts
16 or omissions of each other defendant, as herein described. Plaintiff will seek leave to amend
17 when the true names, capacities, connections, and responsibilities of Defendants are ascertained.

18 10. Plaintiff is informed and believes that the named Defendants conspired to commit
19 the acts described herein, or alternatively, aided and abetted one another in the performance of
20 the wrongful acts hereinafter alleged.

21 **PRELIMINARY FACTUAL ALLEGATIONS:**

22 11. Defendants are the private person and/or entity that is a public accommodation that
23 owns, leases (or leases to), or operates THE SCORE DRAFT ROOM, an entertainment facility,

1 located at/near 426 E. Exchange St., Akron, Ohio. THE SCORE DRAFT ROOM and each of its
2 facilities are places “of public accommodation” subject to the requirements of the Americans
3 with Disability Act of 1990 (“TITLE III” AND “ADA”), 42. U.S.C. §§ 12181 *et seq.*, Ohio
4 Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code § 4101:1-11, *et sec.* On
5 information and belief, said facility has undergone “alterations, structural repairs and additions,”
6 each of which has subjected THE SCORE DRAFT ROOM to handicapped access requirements.
7

8 12. Plaintiff SPENCER NEAL is a person with a disability. Plaintiff SPENCER NEAL is
9 a “physically disabled person,” as defined by all applicable Ohio and United States laws.

10 Plaintiff SPENCER NEAL requires the use of wheelchair for mobility and to travel in public.
11

12 13. At all times referred to herein and continuing to the present time, Defendants
13 advertised, publicized and held out the THE SCORE DRAFT ROOM as being handicapped
14 accessible and handicapped usable.
15

16 14. On or about September 30, 2017, plaintiff SPENCER NEAL was an invitee and guest
17 at the subject THE SCORE DRAFT ROOM, arriving for purposes of purchasing food and/or
18 drink.

19 15. On or about September 30, 2017, plaintiff SPENCER NEAL upon entering the
20 parking lot noticed no designated accessible parking spaces on the shortest accessible route and
21 no signage designating handicapped accessible parking.
22

23 16. On or about September 30, 2017, plaintiff SPENCER NEAL attempted to gain access
24 to the establishment and noticed that there was no accessible route to enter the facility. In the
25 building’s front, two steps prevented plaintiff’s entrance into the building. In the building’s rear,
26 the building did have a ramp that may have allowed plaintiff entry into the building. However, a
27 fenced in patio, which included a door, was locked. The locked door prevented plaintiff’s entry
28

1 from the rear. Plaintiff attempted to ask individuals outside in the patio to unlock the fence door,
2 however no one would assist him. Additionally, a parking lot with cracked and uneven pavement
3 made SPENCER NEAL's trek from a non-accessible parking space to THE SCORE DRAFT
4 ROOM's entrances extremely difficult. In traversing the property and attempting to enter the
5 facility, SPECER NEAL strained and injured his shoulders.
6

7 17. Therefore, at said time and place, plaintiff SPENCER NEAL, a person with
8 a disability, encountered the following inaccessible elements of the subject THE SCORE
9 DRAFT ROOM which constituted architectural barriers and a denial of the proper and legally
10 required access to a public accommodation to persons with physical disabilities including, but
11 not limited to:
12

- 13 a. lack of designated handicapped accessible parking along the shortest
14 accessible route;
- 15 b. lack of signage designating handicapped accessible parking, including, but not
16 limited to, van accessible parking, tow-away and fine signs;
- 17 c. lack of an accessible route to the entrances of the establishment;
- 18 d. severe cracked and uneven pavement;
- 19 e. lack of or inadequately defined policies and procedures for the assistance of
20 disabled patrons;
- 21 f. on personal knowledge, information and belief, other public facilities and
22 elements too numerous to list were improperly inaccessible for use by
23 persons with physical disabilities.
24
25

26 18. The discriminatory violations described in ¶ 17 are not an exclusive list of the
27 Defendants' violations. Plaintiff SPENCER NEAL requires the inspection of the Defendants'
28

1 place of public accommodation in order to photograph and measure all of the discriminatory acts
2 violating the Americans with Disability Act of 1990 ("title III" AND "ADA"), 42. U.S.C. §§
3 12181 *et seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code §4101:1-11,
4
5 *et sec.*

6 19. At all times stated herein, the existence of architectural barriers at Defendants'
7 place of public accommodation evidenced "actual notice" of Defendants' intent not to comply
8 with the Americans with Disability Act of 1990 ("title III" and "ADA"), 42. U.S.C. §§ 12181 *et*
9 *seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code §4101:1-11, *et sec.*
10
11 either then, now or in the future.

12 20. As a legal result of Defendants' failure to act as a reasonable and prudent public
13 accommodation in identifying, removing or creating architectural barriers, policies, practices and
14 procedures that denied access to plaintiff and other persons with disabilities, plaintiff suffered
15 damages as alleged herein.
16

17 21. As a further legal result of the actions and failure to act of defendant, and as a
18 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
19 herein, plaintiff was denied his civil rights to full and equal access to public facilities. Plaintiff
20 SPENCER NEAL suffered a loss of his civil rights and his rights as a person with physical
21 disabilities to full and equal access to public facilities, and further suffered from injury, shame,
22 humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and naturally
23 associated with a person with physical disabilities being denied access, all to his damages as
24 prayed hereinafter in an amount within the jurisdiction of this court.
25

26 22. Plaintiff SPENCER NEAL is "physically handicapped," "physically disabled," or a
27 "person with physical disabilities" who was denied his rights to equal access to a public facility
28

1 by Defendants. Defendants maintained a public establishment without access for persons with
2 physical disabilities to its parking lot and other public areas as stated herein, and continues to the
3 date of filing this complaint to deny equal access to plaintiff and other persons with physical
4 disabilities in these and other ways.

5
6 23. On information and belief, construction alterations carried out by Defendants have
7 triggered access requirements under Americans with Disability Act of 1990 ("TITLE III" AND
8 "ADA"), 42. U.S.C. §§ 12181 *et seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio
9 Administrative Code §4101:1-11, *et sec.*

10
11 24. Plaintiff, as described herein below, seeks injunctive relief to require THE SCORE
12 DRAFT ROOM to be made accessible to meet the requirements of both Ohio law and the
13 Americans with Disabilities Act, whichever is more restrictive, so long as Defendants operates
14 and/or lease THE SCORE DRAFT ROOM as a public facility. Plaintiff seeks damages for
15 violation of his civil rights, from September 30, 2017 until such date as defendant brings the
16 establishment into full compliance with the requirements of Ohio and federal law. To encourage
17 defendant to bring the establishment into compliance with the law, plaintiff also seeks daily
18 damages of not less than \$1,000/day for each day after his visit until such time as THE SCORE
19 DRAFT ROOM is made fully accessible to plaintiff and to other persons with physical
20 disabilities.
21

22
23 25. On information and belief, Defendants have been negligent in its affirmative duty to
24 identify the architectural barriers complained of herein and negligent in the removal of some or
25 all of said barriers.

26
27 26. Because of Defendants' violations, plaintiff and other persons with physical
28 disabilities are unable to use public facilities such as those owned and operated by Defendants on

1 a "full and equal" basis unless such facility is in compliance with the provisions of the
2 Americans with Disabilities Act and other accessibility law as plead herein. Plaintiff seeks an
3 order from this court compelling Defendants to make THE SCORE DRAFT ROOM accessible
4 to persons with disabilities.
5

6 27. On information and belief, Defendants have intentionally undertaken to modify and
7 alter existing building(s), and have failed to make them comply with accessibility requirements.
8 The acts and omission of Defendants in failing to provide the required accessible public facilities
9 at the time of plaintiff's visit and injuries, indicate actual and implied malice towards plaintiff,
10 and despicable conduct carried out by Defendants with a willful and conscious disregard for the
11 rights and safety of plaintiff and other similarly situated persons, and justify punitive damages
12 pursuant to Ohio Revised Code § 2315.21, in amounts sufficient to make a more profound
13 example of Defendants to other operators of other establishment and other public facilities, and
14 to punish Defendants and to carry out the purposes of § 2315.21.
15
16

17 28. Plaintiff is informed and believes and therefore alleges that Defendants caused the
18 subject building(s) to be constructed, altered and maintained in such a manner that persons with
19 physical disabilities were denied full and equal access to, within and throughout said building(s)
20 of THE SCORE DRAFT ROOM and were denied full and equal use of said public facilities.
21 Further, on information and belief, defendant has continued to maintain and operate said THE
22 SCORE DRAFT ROOM and/or its building(s) in such conditions up to the present time, despite
23 actual and constructive notice to such Defendants that the configuration of the establishment
24 and/or its building(s) is in violation of the civil rights of persons with physical disabilities, such
25 as plaintiff SPENCER NEAL and the disability community. Such construction, modification,
26 ownership, operation, maintenance and practices of such public facilities are in violation of law
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28

1 as stated in Americans with Disability Act of 1990 ("TITLE III" AND "ADA"), 42. U.S.C. §§
2 12181 *et seq.* and elsewhere in the laws of Ohio.

3 29. On information and belief, the subject public facilities and building(s) of
4 THE SCORE DRAFT ROOM denied full and equal access to plaintiff and other persons with
5 physical disabilities in other respects due to noncompliance with requirements of Ohio Revised
6 Code § 4112.02, *et seq.*; and Ohio Administrative Code §4101:1-11, *et sec.*

8 30. On personal knowledge, information and belief, the basis of Defendants' actual
9 and constructive notice that the physical configuration of the facilities including, but not limited
10 to, architectural barriers constituting THE SCORE DRAFT ROOM and/or building(s) was in
11 violation of the civil rights of persons with physical disabilities, such as plaintiff, includes, but is
12 not limited to, communications with invitees and guests, owners of other establishments and
13 businesses, notices Defendants obtained from governmental agencies upon modification,
14 improvement, or substantial repair of the subject premises and other properties owned by this
15 Defendants, newspaper articles and trade publications regarding the Americans with Disabilities
16 Act and other access laws, public service announcements, and other similar information.
17 Defendants' failure, under state and federal law, to make the establishment accessible is further
18 evidence of Defendants' conscious disregard for the rights of plaintiff and other similarly
19 situated persons with disabilities. The scope and means of the knowledge of Defendants are
20 within Defendants' exclusive control and cannot be ascertained except through discovery.
21 Despite being informed of such effect on plaintiff and other persons with physical disabilities
22 due to the lack of accessible facilities, Defendants knowingly and willfully refused to take any
23 steps to rectify the situation and to provide full and equal access for plaintiff and other persons
24 with physical disabilities to the establishment. Said Defendants have continued such practices, in
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1 conscious disregard for the rights of plaintiff and other persons with physical disabilities, up to
2 the date of filing of this complaint, and continuing thereon. Defendants have further actual
3 knowledge of the architectural barriers referred to herein by virtue of the demand letter addressed
4 to the Defendants and served concurrently with the complaint. Said conduct, with knowledge of
5 the effect it was and is having on plaintiff and other persons with physical disabilities, constitutes
6 despicable conduct in conscious disregard of the rights and safety of plaintiff and of other
7 similarly situated persons, justifying the imposition of punitive damages.

9 31. Punitive Damages -- Defendants, at times prior to and including September 30, 2017
10 and continuing to the present time, knew that persons with physical disabilities were denied their
11 rights of equal access to all portions of this public facility. Despite such knowledge, Defendants
12 failed and refused to take steps to comply with the applicable access statutes; and despite
13 knowledge of the resulting problems and denial of civil rights thereby suffered by plaintiff and
14 other similarly situated persons with disabilities, including the specific notices referred to in
15 paragraph 30 of this complaint. Defendants have failed and refused to take action to grant full
16 and equal access to persons with physical disabilities in the respects complained of hereinabove.
17 Defendants have carried out a course of conduct of refusing to respond to, or correct complaints
18 about, denial of handicap access and has refused to comply with its legal obligations to make
19 THE SCORE DRAFT ROOM accessible pursuant to the Americans with Disabilities Act and
20 Ohio law. Such actions and continuing course of conduct by Defendants evidence despicable
21 conduct in conscious disregard for the rights or safety of plaintiff and of other similarly situated
22 persons, justifying an award of punitive damages.

26 32. Defendants' actions have also been oppressive to persons with physical
27 disabilities and of other members of the public, and have evidenced actual or implied malicious
28

1 intent toward those members of the public, such as plaintiff and other persons with physical
 2 disabilities who have been denied the proper access they are entitled to by law. Further,
 3 Defendants' refusals on a day-to-day basis to remove the barriers complained of herein evidence
 4 despicable conduct in conscious disregard for the rights of plaintiff and other members of the
 5 public with physical disabilities.
 6

7 33. Plaintiff prays for an award of punitive damages against Defendants in an amount
 8 sufficient to make a more profound example of Defendants and discourage owners and operators
 9 of other establishments, and other public facilities, from willful disregard of the rights of persons
 10 with physical disabilities. Plaintiff does not know the financial worth of Defendants and seeks
 11 leave to amend this complaint when such facts are known.
 12

13 34. Plaintiff SPENCER NEAL, would, could and will return to the subject public
 14 accommodation when it is made accessible to persons with disabilities.
 15

16 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**
 17 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
 18 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

19 35. Plaintiff pleads and incorporate by reference, as if fully set forth again herein,
 20 the allegations contained in paragraphs 1 through 34 of this complaint.
 21

22 36. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.
 23 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully
 24 protect:

25 some 43 million Americans with one or more physical or mental
 26 disabilities; [that] historically society has tended to isolate and
 27 segregate individuals with disabilities; [that] such forms of
 28 discrimination against individuals with disabilities continue to be a
 serious and pervasive social problem; [that] the nation's proper
 goals regarding individuals with disabilities are to assure equality
 of opportunity, full participation, independent living and economic
 self-sufficiency for such individuals; [and that] the continuing

1 existence of unfair and unnecessary discrimination and prejudice
2 denies people with disabilities the opportunity to compete on an
3 equal basis and to pursue those opportunities for which our free
4 society is justifiably famous.

5 37. Congress stated as its purpose in passing the Americans with Disabilities Act of
6 1990 (42 U.S.C. §12102):

7 It is the purpose of this act (1) to provide a clear and
8 comprehensive national mandate for the elimination of
9 discrimination against individuals with disabilities; (2) to provide
10 clear, strong, consistent, enforceable standards addressing
11 discrimination against individuals with disabilities; (3) to ensure
12 that the Federal government plays a central role in enforcing the
13 standards established in this act on behalf of individuals with
14 disabilities; and (4) to invoke the sweep of Congressional
15 authority, including the power to enforce the 14th Amendment and
16 to regulate commerce, in order to address the major areas of
17 discrimination faced day to day by people with disabilities.

18 38. As part of the Americans with Disabilities Act of 1990, (hereinafter the “ADA”),
19 Congress passed “Title III - Public Accommodations and Services Operated by Private Entities”
20 (Section 301 42 U.S.C. §12181, *et seq.*). Among the public accommodations identified for
21 purposes of this title was:

22 (7) PUBLIC ACCOMMODATION - The following private
23 entities are considered public accommodations for purposes of this
24 title, if the operations of such entities affect commerce -

25 ...
26 (B) an entertainment facility, bar, or other establishment serving food or drink;

27 42 .S.C. §12181(7)(B).

28 39. Pursuant to §302, 42 U.S.C. §12182, “No individual shall be discriminated
against on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
privileges, advantages, or accommodations of any place of public accommodation by any person
who owns, leases, or leases to, or operates a place of public accommodation.”

40. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 14

1 42 U.S.C. §12182(b)(2)(a) are:

2 (i) the imposition or application of eligibility criteria
3 that screen out or tend to screen out an individual with a disability
4 or any class of individuals with disabilities from fully and equally
5 enjoying any goods, services, facilities, privileges, advantages, or
6 accommodations, unless such criteria can be shown to be
7 necessary for the provision of the goods, services, facilities,
8 privileges, advantages, or accommodations being offered;

9 (ii) a failure to make reasonable modifications in
10 policies, practices, or procedures, when such modifications are
11 necessary to afford such goods, services, facilities, privileges,
12 advantages or accommodations to individuals with disabilities,
13 unless the entity can demonstrate that making such modifications
14 would fundamentally alter the nature of such goods, services,
15 facilities, privileges, advantages, or accommodations;

16 (iii) a failure to take such steps as may be necessary to
17 ensure that no individual with a disability is excluded, denied
18 services, segregated or otherwise treated differently than other
19 individuals because of the absence of auxiliary aids and services,
20 unless the entity can demonstrate that taking such steps would
21 fundamentally alter the nature of the good, service, facility,
22 privilege, advantage, or accommodation being offered or would
23 result in an undue burden;

24 (iv) a failure to remove architectural barriers, and
25 communication barriers that are structural in nature, in existing
26 facilities . . . where such removal is readily achievable; and

27 (v) where an entity can demonstrate that the removal of
28 a barrier under clause (iv) is not readily achievable, a failure to
make such goods, services, facilities, privileges, advantages or
accommodations available through alternative methods if such
methods are readily achievable.

29 The acts of Defendants set forth herein were a violation of plaintiff's rights under the ADA, 42.

30 U.S.C. §§ 12181 *et seq.*; Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code §
31 4101:1-11, *et sec.*, making available damage remedies.

32 41. The removal of the barriers complained of by plaintiff as hereinabove alleged
33 was at all times after January 26, 1992 "readily achievable" as to the subject building(s) of THE
34 COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 15

1 SCORE DRAFT ROOM pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and
2 belief, if the removal of all the barriers complained of herein together was not “readily
3 achievable,” the removal of each individual barrier complained of herein was “readily
4 achievable.” On information and belief, Defendants’ failure to remove said barriers was likewise
5 due to discriminatory practices, procedures and eligibility criteria, as defined by §302(b)(2)(a)(i)-
6 (iii); 42 U.S.C. §12182 (b)(2)(A)(i).

8 42. Per §301(9), 42 U.S.C. §12181 (9), the term “readily achievable” means “easily
9 accomplishable and able to be carried out without much difficulty or expense.” The statute
10 defines relative “expense” in part in relation to the total financial resources of the entities
11 involved. Plaintiff alleges that properly repairing, modifying, or altering each of the items that
12 plaintiff complains of herein were and are “readily achievable” by the Defendants under the
13 standards set forth under §301(9) of the Americans with Disabilities Act. Further, if it was not
14 “readily achievable” for Defendants to remove each of such barriers, Defendants have failed to
15 make the required services available through alternative methods which were readily achievable.
16

18 43. On information and belief, construction work on, and modifications of, the
19 subject building(s) of THE SCORE DRAFT ROOM occurred after the compliance date for the
20 Americans with Disabilities Act, January 26, 1992, independently triggering access requirements
21 under Title III of the ADA.

23 44. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
24 *seq.*, §308, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil
25 Rights Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiff is being subjected to discrimination on
26 the basis of disability in violation of this title or have reasonable grounds for believing that
27 plaintiff is about to be subjected to discrimination in violation of §302. Plaintiff cannot
28

1 return to or make use of the public facilities complained of herein so long as the premises and
2 Defendants' policies bar full and equal use by persons with physical disabilities.

3 45. Per §308(a)(1) (42 U.S.C. 12188), "Nothing in this section shall require a person
4 with a disability to engage in a futile gesture if such person has actual notice that a person or
5 organization covered by this title does not intend to comply with its provisions." Pursuant to this
6 last section, plaintiff SPENCER NEAL has not returned to Defendants' premises since on or
7 about September 30, 2017, but on information and belief, alleges that Defendants have continued
8 to violate the law and deny the rights of plaintiff and of other persons with physical disabilities to
9 access this public accommodation. Pursuant to §308(a)(2), "In cases of violations of
10 §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such
11 facilities readily accessible to and usable by individuals with disabilities to the extent required by
12 this title."
13

14 46. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights
15 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement
16 the Americans with Disabilities Act of 1990, including but not limited to an order granting
17 injunctive relief and attorneys' fees. Plaintiff will seek attorneys' fees conditioned upon being
18 deemed to be the prevailing party.
19

20 47. Plaintiff seek damages pursuant to Ohio Revised Code § 4112.02, *et seq.* and
21 Ohio Administrative Code § 4101:1-11, *et sec.*, which provide, within the statutory scheme, that
22 a violation of the ADA and/or Ohio's accessibility standards is a violation of Ohio law.
23

24 Wherefore, plaintiff prays for relief and damages as hereinafter stated.
25

26 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**
27 **IN VIOLATION OF OHIO REVISED CODE § 4112.02, *et seq.***

28 48. Plaintiff repleads and incorporates by reference as if fully set forth again herein,
COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 17

1 the allegations contained in paragraphs 1 through 47 of this complaint.

2 49. At all times relevant to this action, Ohio Revised Code § 4112.0254 has provided
3 that persons with physical disabilities are not to be discriminated against because of physical
4 handicap or disability. This section provides that:
5

6 It shall be an unlawful discriminatory practice:

7 (G) For any proprietor or any employee, keeper, or manager of a place of
8 public accommodation to deny to any person, except for reasons
9 applicable alike to all persons regardless of race, color, religion, sex,
10 military status, national origin, disability, age, or ancestry, the full
11 enjoyment of the accommodations, advantages, facilities, or privileges of
12 the place of public accommodation.

13 50. THE SCORE DRAFT ROOM and the business therein, are “places of public
14 accommodation” pursuant to Ohio Revised Code § 4112.01(A)(9).

15 51. Defendants committed an unlawful act pursuant to Ohio Revised Code §
16 4112.02(G) by denying plaintiff SPENCER NEAL full enjoyment of its accommodations,
17 advantages, facilities, or privileges, whereas, plaintiff SPENCER NEAL had great difficulty
18 entering the property due to extensive barriers for patrons confined to wheelchairs on the
19 accessible route.

20 52. Pursuant to Ohio Revised Code § 4112.99, plaintiff SPENCER NEAL is
21 entitled to compensatory and punitive damages, and attorney fees and costs, in an amount to be
22 determined at trial, but in any event not less than \$25,000.00, as well as issuance of an injunction
23 requiring defendant to allow full and equal enjoyment of its goods, services, facilities, privileges,
24 and advantages to disabled persons.

25 53. A separate act in violation of Ohio Revised Code § 4112.02(G) has been
26 committed each day that Defendants act or fail to act and/or knowingly and willfully fails and
27 refuse to remove each architectural barrier or policy and procedure barrier presently existing at
28 COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 18

1 the subject public accommodation which denies full and equal access for persons with physical
2 disabilities to said building(s), elements and facilities of THE SCORE DRAFT ROOM. Plaintiff
3 has been denied full and equal access on an ongoing basis since the date of plaintiff SPENCER
4 NEAL' first visit. As a legal result, plaintiff is entitled to seek appropriate relief, such as
5 damages, pursuant to Ohio Revised Code § 4112.99.
6

7 54. On or about September 30, 2017, plaintiff SPENCER NEAL suffered violations
8 of Ohio Revised Code § 4112.02(G) in that plaintiff SPENCER NEAL was denied access to the
9 parking and other public facilities as stated herein at THE SCORE DRAFT ROOM and on the
10 basis that plaintiff SPENCER NEAL was a person with physical disabilities.
11

12 55. As a result of the denial of equal access to Defendants' facilities due to the acts
13 and omissions of Defendants in owning, operating and maintaining these subject public facilities,
14 plaintiff suffered violations of his civil rights, as well as suffering from injury, shame,
15 humiliation, embarrassment, frustration, anger, chagrin, disappointment and worry, all of which
16 are expectedly and naturally associated with a denial of access to a person with physical
17 disabilities, all to plaintiff's damages as hereinafter stated.
18

19 56. Plaintiff has been damaged by Defendants' wrongful conduct and seeks the relief
20 that is afforded by Ohio Revised Code § 4112 for violation of plaintiff's rights as a person,
21 including statutory damages according to proof.
22

23 57. As a result of Defendants' acts and omissions in this regard, plaintiff has been
24 required to incur legal expenses and hire attorneys in order to enforce plaintiff's rights and
25 enforce the provisions of the law protecting access for persons with physical disabilities and
26 prohibiting discrimination against persons with physical disabilities. Pursuant to the provisions
27 of Ohio Revised Code § 4112, plaintiff therefore will seek recovery in this lawsuit for all
28

1 reasonable attorneys' fees and costs incurred if deemed the prevailing party.

2 Wherefore, plaintiff prays for relief and damages as hereinafter stated.

3 **III. THIRD CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**
4 **IN VIOLATION OF OHIO ADMINISTRATIVE CODE § 4101:1-11, *et seq.***

5 58. Plaintiff repleads and incorporates by reference as if fully set forth again herein,
6 the allegations contained in paragraphs 1 through 57 of this complaint.

7
8 59. Ohio Administrative Code (hereinafter "O.A.C.") § 4101:1-11 controls the design
9 and construction of facilities for accessibility for individuals with disabilities.

10 60. Sites, buildings, structures, facilities, elements and spaces, temporary or
11 permanent, shall be accessible to individuals with disabilities. O.A.C. § 1103.1.

12 61. THE SCORE DRAFT ROOM and the business therein, being a site, building,
13 structure, facility, element or space, committed an unlawful act pursuant to O.A.C. § 1104.1 by
14 failing to provide at least one accessible route to the THE SCORE DRAFT ROOM building
15 entrance.
16

17 62. As THE SCORE DRAFT ROOM provides between 1 to 25 parking spaces,
18 Defendants are required to have a minimum of one accessible parking space pursuant to O.A.C.
19 § 1106.1.
20

21 63. THE SCORE DRAFT ROOM committed an unlawful act pursuant to O.A.C. §
22 1106.1 by failing to provide any accessible parking spaces, which are to include applicable
23 signage. In violation of O.A.C. § 1106.6, Defendants failed to provide any accessible parking
24 spaces on the shortest accessible route of travel from adjacent parking to an accessible building
25 entrance.
26

27 64. Defendants' violations denied plaintiff SPENCER NEAL full enjoyment of
28 its accommodations, advantages, facilities, or privileges, whereas, plaintiff SPENCER NEAL
COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 20

1 had great difficulty entering the property due to extensive barriers for patrons confined to
2 wheelchairs on the accessible route.

3 65. As a result of these violations, plaintiff SPENCER NEAL is entitled to
4 compensatory and punitive damages, and attorney fees and costs, in an amount to be determined
5 at trial, but in any event not less than \$25,000.00, as well as issuance of an injunction requiring
6 Defendants to allow full and equal enjoyment of its goods, services, facilities, privileges, and
7 advantages to disabled persons.
8

9 66. A separate act in violation of Ohio Administrative Code § 4101:1-11, *et seq.* has
10 been committed each day that Defendants act or fail to act and/or knowingly and willfully
11 fail and refuse to make accessible its site for physically disabled persons presently existing at the
12 subject THE SCORE DRAFT ROOM. Plaintiff has been denied full and equal access on an
13 ongoing basis since the date of plaintiff SPENCER NEAL' first visit. As a legal result, plaintiff
14 is entitled to seek appropriate relief, such as damages.
15

16 67. As a result of THE SCORE DRAFT ROOM's accessibility violations, plaintiff
17 suffered violations of his civil rights, as well as suffering from injury, shame, humiliation,
18 embarrassment, frustration, anger, chagrin, disappointment and worry, all of which are
19 expectedly and naturally associated with a denial of access to a person with physical disabilities,
20 all to plaintiff's damages as hereinafter stated.
21

22 68. Plaintiff has been damaged by Defendants' wrongful conduct and seeks relief
23 for violation of the O.A.C., including actual and special damages according to proof.
24

25 69. As a result of Defendants' acts and omissions in this regard, plaintiff has been
26 required to incur legal expenses and hire attorneys in order to enforce plaintiff's rights and
27 enforce the provisions of the law protecting access for persons with physical disabilities and
28

1 prohibiting discrimination against persons with physical disabilities. Plaintiff therefore will seek
2 recovery in this lawsuit for all reasonable attorneys' fees and costs incurred if deemed the
3 prevailing party.

4
5 Wherefore, plaintiff prays for relief and damages as hereinafter stated.

6 **PRAYER:**

7 Wherefore, plaintiff prays that this court grant relief and damages as follows:

8 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**
9 **PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
10 **DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, et seq.)**

11 1. For injunctive relief, compelling Defendants to make THE SCORE DRAFT
12 ROOM, located at 426 E. Exchange St., Akron, Ohio, readily accessible to and usable by
13 individuals with disabilities; and to make reasonable modifications in policies, practice,
14 eligibility criteria and procedures so as to afford full access to the goods, services, facilities,
15 privileges, advantages and accommodations being offered.

16
17 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiff is deemed
18 the prevailing party; and

19 3. For such other and further relief as the court may deem proper.

20 **I. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**
21 **EQUAL ACCESS IN VIOLATION OF OHIO REVISED CODE § 4112.02, et**
22 **seq.**

23 4. For injunctive relief, compelling Defendants to make THE SCORE DRAFT
24 ROOM, located at 426 E. Exchange St., Akron, Ohio, readily accessible to and usable by
25 individuals with disabilities, per state law.

26 5. General and compensatory damages according to proof;

27 6. All damages for each day, from the inception of the filing of this complaint, on
28

1 which Defendants have failed to remove barriers which denied plaintiff and other persons with
2 disabilities full and equal access.

3 7. Attorneys' fees pursuant to Ohio Revised Code § 4112.99, if plaintiff is deemed
4 the prevailing party;
5

6 8. Punitive damages, pursuant to Ohio Revised Code § 2315.21;

7 9. For all costs of suit;

8 10. Prejudgment interest pursuant to Ohio Revised Code 1343.03(A);

9 11. Such other and further relief as the court may deem just and proper.
10

11 **III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF FULL AND**
12 **EQUAL ACCESS IN VIOLATION OF OHIO ADMINISTRATIVE CODE §**
13 **4101:1-11, *et seq.***

14 12. For injunctive relief, compelling Defendants to make THE SCORE DRAFT
15 ROOM, located at 426 E. Exchange St., Akron, Ohio, readily accessible to and usable by
16 individuals with disabilities, per state law.

17 13. General and compensatory damages according to proof;

18 14. All damages for each day, from the inception of the filing of this complaint, on
19 which Defendants have failed to remove barriers which denied plaintiff and other persons with
20 disabilities full and equal access.

21 15. Attorneys' fees pursuant to Ohio Revised Code § 4112.99, if plaintiff is deemed
22 the prevailing party;
23

24 16. Punitive damages, pursuant to Ohio Revised Code § 2315.21;

25 17. For all costs of suit;

26 18. Prejudgment interest pursuant to Ohio Revised Code 1343.03(A);

27 19. Such other and further relief as the court may deem just and proper.
28

1
2 /s/ COLIN G. MEEKER

3 COLIN G. MEEKER (Ohio Bar No. 0092980)
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9 cgm@bmblaw.com

10 Attorney for Plaintiff SPENCER NEAL

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands a jury trial for all claims for which a jury is permitted.

13 /s/ COLIN G. MEEKER

14 COLIN G. MEEKER (Ohio Bar No. 0092980)
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